

**REMARKS**

As a preliminary matter, the Examiner rejected Claims 29-38 under 35 U.S.C. § 112, second paragraph, as being indefinite. In particular, the Examiner objects to the phrase in Claim 29 which states “wherein the budding mediating motif does not include any amino acids directly adjacent to the amino acid sequence.” This phrase has been deleted from independent Claim 29. Claims 30-33 are each ultimately dependent from Claim 29. Independent Claim 34 never included this phrase, and so Applicants respectfully assert that the rejection of Claims 34-38 under 35 U.S.C. § 112, second paragraph, was made in error. Accordingly, Applicants respectfully assert that claims 29-38 are now in acceptable form. Therefore, Applicants respectfully request Examiner remove the rejection of Claims 29-38 under 35 U.S.C. § 112, second paragraph, as being indefinite.

The Examiner has rejected claims 29-33 under 35 U.S.C. § 102(b) as being anticipated by the article by González et al. (1996) (“González”). The Examiner has also rejected claims 29-38 under 35 U.S.C. § 102(b) as being anticipated by the article by Puffer et al. (1997) (“Puffer”). Claims 29, 30, 34, and 35 stand currently amended. Claims 1-12, 17-20, and 25-28 stand previously canceled. Claims 13-16 and 21-24 stand withdrawn. Claims 13-16, 21-24, and 29-38 are currently pending. The following remarks are considered by applicant to overcome each of the Examiner’s outstanding rejections to current claims 29-38. An early Notice of Allowance is therefore requested.

**I. SUMMARY OF RELEVANT LAW**

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.

**II. REJECTION OF CLAIMS 29-33 UNDER 35 U.S.C. § 102(B) BASED ON GONZÁLEZ**

On page 2 of the Office Action, the Examiner rejects claims 29-33 under 35 U.S.C. § 102(b) as being anticipated by González. These rejections are respectfully traversed and believed overcome in view of the following discussion.

Amended Claim 29 states, in part:

“one **contiguous deletion** mutation of contiguous amino acids in the nucleic acid;

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“wherein the one **contiguous** deletion **consists** of an amino acid sequence selected from the group consisting of PTAP (SEQ ID NO: 1), PPX<sub>1</sub>Y (SEQ ID NO:2), YX<sub>2</sub>X<sub>3</sub>L (SEQ ID NO:3), and a combination thereof.” (emphasis added).

González fails to disclose the deletion of a contiguous deletion consisting of any of the above three amino acid sequences or a combination thereof.

As can be seen in Fig. 1 and as admitted by Examiner, the deletion is of the C-terminus which includes PTAP. In fact, Examiner admits that González discloses, in Fig. 1, a deletion of the C-terminous amino acid sequence “VETGTADKMPATSPTAP”.

As such, González discloses a contiguous deletion comprising PTAP, but not a contiguous deletion consisting of PTAP. Accordingly, González fails to disclose a contiguous deletion consisting of PTAP, as stated in Claim 29.

During a telephonic interview with the Examiner on April 9, 2009. The above was explained to the Examiner. The above language of amended Claim 29 was reached in conjunction with the Examiner so as to clarify that, even though the claim initially uses open “comprising” language, the claim requires at least one contiguous deletion that consists of one of the above three amino acid sequences or a combination thereof. Accordingly, Examiner has agreed that the above language of Claim 29 distinguishes it over the cited art.

As such, Applicants respectfully assert that Examiner has failed to establish a *prima facie* case of anticipation of independent Claim 29, and corresponding claims 30-33

because they are each dependant from independent Claim 29. Therefore, Applicants respectfully request that Examiner remove the rejections of claims 29-33 under 35 U.S.C. § 102(b) as being anticipated by the article by González et al. (1996).

### **III. REJECTION OF CLAIMS 29-38 UNDER 35 U.S.C. § 102(B) BASED ON PUFFER**

On page 3 of the Office Action, the Examiner rejects claims 29-38 under 35 U.S.C. § 102(b) as being anticipated by Puffer. These rejections are respectfully traversed and believed overcome in view of the following discussion.

#### **Claim 29-33**

Amended Claim 29 states, in part:

“one **contiguous deletion** mutation of contiguous amino acids in the nucleic acid;

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“wherein the one **contiguous deletion** **consists** of an amino acid sequence selected from the group consisting of PTAP (SEQ ID NO: 1), PPX<sub>1</sub>Y (SEQ ID NO:2), YX<sub>2</sub>X<sub>3</sub>L (SEQ ID NO:3), and a combination thereof.” (emphasis added).

Puffer fails to disclose the deletion of a budding mediating motif consisting of any of the above three amino acid sequences or a combination thereof.

Examiner cites to EG.d1-28 in Fig. 1 of Puffer as disclosing the above claim language as it relates to YX<sub>2</sub>X<sub>3</sub>L (in particular to YPDL in spots 23-26 of d1-28).

However, as with González above, the deletion d1-28 of Puffer includes YDPL. More specifically, González discloses, in Fig. 1, a deletion of the amino acid sequence “PIQQKSQHNKSVVQETPQTQNLYPDLSE”.

As such, Puffer discloses a contiguous deletion comprising YDPL, but not a contiguous deletion consisting of YDPL. Accordingly, Puffer fails to disclose a contiguous deletion consisting of YX<sub>2</sub>X<sub>3</sub>L, as stated in Claim 29.

During a telephonic interview with the Examiner on April 9, 2009. The above was explained to the Examiner. The above language of amended Claim 29 was reached in conjunction with the Examiner so as to clarify that, even though the claim initially uses open “comprising” language, the claim requires at least one contiguous deletion that consists of one of the above three amino acid sequences or a combination thereof. Accordingly, Examiner has agreed that the above language of Claim 29 distinguishes it over the cited art.

As such, Applicants respectfully assert that Examiner has failed to establish a *prima facie* case of anticipation of independent Claim 29, and corresponding claims 30-33 because they are each dependant from independent Claim 29. Therefore, Applicants respectfully request that Examiner remove the rejections of claims 29-33 under 35 U.S.C. § 102(b) as being anticipated by the article by Puffer et al. (1997).

### **Claim 34-38**

Claim 34 states, in part:

**“a deletion mutation of the budding mediating motif of the viral protein”**

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“wherein the budding mediating motif **comprises** an amino acid sequence selected from the group consisting of PPX<sub>1</sub>Y (SEQ ID NO:2), YX<sub>2</sub>X<sub>3</sub>L (SEQ ID NO:3), and a combination thereof;

“wherein X<sub>1</sub> is **not** P;

wherein when X<sub>2</sub> is P, X<sub>3</sub> is **not** D; and

wherein when X<sub>3</sub> is D, X<sub>2</sub> is **not** P.” (emphasis added).

None of the references to which the Examiner cites disclose a budding mediating motif comprising either PPX<sub>1</sub>Y (where X<sub>1</sub> is not P), or YX<sub>2</sub>X<sub>3</sub>L (where when X<sub>2</sub> is P, X<sub>3</sub> is not D; and where when X<sub>3</sub> is D, X<sub>2</sub> is not P).

Puffer fails to disclose the deletion of a budding mediating motif comprising any of the above three amino acid sequences or a combination thereof.

As such, Applicants respectfully assert that Examiner has failed to establish a *prima facie* case of anticipation of independent Claim 34, and corresponding claims 35-38 because they are each defendant from independent Claim 34. Therefore, Applicants respectfully request that Examiner remove the rejections of claims 34-38 under 35 U.S.C. § 102(b) as being anticipated by the article by Puffer et al. (1997).

Based upon the above remarks, Applicants respectfully request reconsideration of this application and its early allowance. Should the Examiner feel that a telephone conference with Applicants' attorney would expedite the prosecution of this application, the Examiner is urged to contact him at the number indicated below.

Respectfully submitted,

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